

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 7.100 OF THE MONTEREY COUNTY CODE TO SUSPEND THE FISCAL YEAR 2020-2021 INCREASES ON COMMERCIAL CANNABIS BUSINESS TAX RATES

County Counsel Summary

This ordinance amends Chapter 7.100 of the Monterey County Code to suspend the Fiscal Year 2020-2021 automatic increases on the County's commercial cannabis business tax rates. This ordinance will resume the automatic increases on the commercial cannabis business tax rates in Fiscal Year 2021-2022 on July 1, 2022. This ordinance will assist Monterey County based cannabis businesses in responding to the COVID-19 economic downturn. Specifically, the COVID-19 pandemic has created economic turmoil for numerous types of businesses, and cannabis businesses in particular have been impacted because they are not eligible for federal assistance or traditional banking relief to survive the economic downturn. As such, many cannabis businesses face permanent closure. The permanent closure of cannabis businesses will cause widespread unemployment, abandonment of ongoing greenhouse rehabilitation in the Salinas Valley, and reversion to the illegal black-market sale of cannabis.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Declarations.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. Pursuant to California Revenue and Taxation Code sections 7284 and 34021.5, Monterey County is permitted to impose taxes on cannabis.

C. On July 12, 2016, the Monterey County Board of Supervisors adopted inland zoning regulations establishing criteria for issuing local land use permits (Ordinance Number 5270, amending sections of Title 21 and adding Chapter 21.67 to the Monterey County Code). On July 19, 2016, the Board of Supervisors adopted regulations establishing criteria for issuing local business permits (Ordinance Numbers 5272 and 5273, codified at Monterey County Code Chapters 7.90 and 7.95). All of these ordinances were to become operative only if the Board of Supervisors submitted a County tax on commercial cannabis activities to the voters, the voters approved the tax, and the tax was certified by the County pursuant California Elections Code section 15372.

D. On November 8, 2016, the voters approved the commercial cannabis business tax

(Measure Y, codified at Monterey County Code Chapter 7.100). On December 13, 2016, the tax was certified pursuant to Elections Code section 15372. Specifically, the voters approved a tax on commercial cannabis activities in the unincorporated area of Monterey County up to a maximum of: \$25.00 per square foot on cultivation with an annual adjustment by Consumer Price Index (“CPI”) thereafter; \$5.00 per square foot on nurseries with annual CPI adjustment thereafter; and 10% of gross receipts on other cannabis business activities with no CPI adjustment.

E. On July 24, 2018, the Board of Supervisors adopted Ordinance Number 5305, which amended Monterey County Code Chapter 7.100 to reduce the commercial cannabis tax rates. The ordinance established the following tax rates effective July 1, 2018: for indoor cultivation, the tax rate is \$8.00 per fiscal year per square foot of authorized canopy through June 30, 2020, to increase by \$1.00 per fiscal year until a maximum rate of \$15.00 per square foot is reached, and to increase thereafter based on the CPI; for mixed light cultivation, the tax rate is \$5.00 per fiscal year per square foot of authorized canopy through June 30, 2020, to increase by \$1.00 per fiscal year until a maximum rate of \$15.00 per square foot is reached, and to increase thereafter based on the CPI; for nursery cultivation, the tax rate is \$1.00 per square foot of authorized canopy through June 30, 2020, to increase by \$1 per square foot per fiscal year until a maximum rate of \$5.00 per square foot is reached, and to increase thereafter based on the CPI; for manufacturers, the tax rate is 2.5% of gross receipts per fiscal year through June 30, 2019, to increase thereafter by 1% per fiscal year, not to exceed a maximum rate of 10% of gross receipts per fiscal year; for distributors, the tax rate is 2% of gross receipts per fiscal year through June 30, 2019, to increase thereafter by 1% per fiscal year, not to exceed a maximum rate of 10% of gross receipts per fiscal year; for dispensaries, the tax rate is 4% of gross receipts per fiscal year through June 30, 2019, to increase thereafter by 0.5% per fiscal year, not to exceed a maximum rate of 10% of gross receipts per fiscal year; and for testers, the tax rate is 1% of gross receipts per fiscal year with no increase.

F. The Monterey County Board of Supervisors directed preparation of this ordinance after evaluating information provided by staff and the public concerning the Fiscal Year 2020-2021 cannabis tax rate increases and the COVID-19 economic downturn. Specifically, the COVID-19 pandemic has created economic turmoil for numerous types of businesses, and cannabis businesses in particular have been impacted because they are not eligible for federal assistance or traditional banking relief to survive the economic downturn. As such, many cannabis businesses face permanent closure. The permanent closure of cannabis businesses will cause widespread unemployment, abandonment of ongoing greenhouse rehabilitation in the Salinas Valley, and reversion to the illegal black-market sale of cannabis.

G. The Monterey County Board of Supervisors directed the preparation of this ordinance to defer the increase on cannabis tax rates for a fiscal year. However, the Board of Supervisors reserves its right to later restore higher tax rates up to the maximum amounts approved by the voters in Measure Y and to include taxation of any commercial cannabis activity as approved by the voters in Measure Y. Such restoration of tax rates would not constitute an increase in tax rates that would require voter approval.

SECTION 2. Section 7.100.050 of the Monterey County Code is amended to read as follows:

A. There is established and imposed a commercial cannabis business tax at the rates set forth in this Chapter.

B. Tax on indoor commercial cannabis cultivation except nurseries.

1. Every person who is engaged in commercial cannabis indoor cultivation in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July 1, 2018 through June 30, 2021 for commercial cannabis indoor cultivation, excluding nurseries, shall be set at eight dollars (\$8.00) per fiscal year, per square foot of canopy authorized by each County permit, or by each state license in the absence of a County permit, not deducting for unutilized square footage. The square footage shall be the maximum square footage of canopy allowed by the County permit for commercial cannabis indoor cultivation, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for commercial cannabis indoor cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation.

2. Beginning on July 1, 2021, such tax rate shall automatically increase each fiscal year by one dollar (\$1.00) per square foot of authorized canopy, not to exceed a rate of fifteen dollars (\$15.00) per square foot. Beginning on July 1, 2027 and on July 1 of each succeeding fiscal year thereafter, the amount of each commercial cannabis business tax imposed by this subsection shall be increased by the most recent change in the annual average of the Consumer Price Index ("CPI") for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

C. Tax on mixed light commercial cannabis cultivation except nurseries.

1. Every person who is engaged in commercial cannabis mixed light cultivation in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July 1, 2018 through June 30, 2021 for commercial cannabis mixed light cultivation, excluding nurseries, shall be set at five dollars (\$5.00) per fiscal year, per square foot of canopy authorized by each County permit, or by each state license in the absence of a County permit, not deducting for unutilized square footage. The square footage shall be the maximum square footage of canopy allowed by the County permit for commercial cannabis mixed light cultivation, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for commercial cannabis mixed light cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or

license but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation.

2. Beginning on July 1, 2021, such tax rate shall automatically increase each fiscal year by one dollar (\$1.00) per square foot of authorized canopy, not to exceed a rate of fifteen dollars (\$15.00) per square foot. Beginning on July 1, 2030 and on July 1 of each succeeding fiscal year thereafter, the amount of each commercial cannabis business tax imposed by this subsection shall be increased by the most recent change in the annual average of the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

D. Tax on commercial cultivation of cannabis as a nursery.

1. Every person who is engaged in the commercial cultivation of cannabis as a nursery as defined in this Chapter in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July 1, 2018 through June 30, 2021 shall be set at one dollar (\$1.00) per square foot of canopy authorized by each County permit, or by each state license in the absence of a County permit, not deducting for unutilized square footage. The square footage shall be the maximum square footage of canopy allowed by the County permit for cultivation of cannabis as a nursery, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for cultivation of cannabis as a nursery allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation as a nursery be deducted for the purpose of determining the tax for cultivation as a nursery.

2. Beginning on July 1, 2021, such tax rate shall automatically increase each fiscal year by one dollar (\$1.00) per square foot of canopy utilized for cannabis cultivation as a nursery, not to exceed the maximum tax rate of five dollars (\$5.00) per square foot per annum. Beginning on July 1, 2025 and on July 1 of each succeeding fiscal year thereafter, the amount of each commercial cannabis business tax imposed by this subsection shall be increased by the most recent change in the annual average of the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

E. Tax on commercial cannabis manufacturers.

1. Every person who is engaged in business as a manufacturer of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July 1, 2018 through June 30, 2019 shall be set at two and one-half percent (2.5%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2019, such tax rate shall automatically increase each fiscal year by one percent (1%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts. However, such automatic increase shall not take place in Fiscal Year 2020-2021 on July 1, 2020. The annual one percent (1%) increase shall resume in Fiscal Year 2021-2022 on July 1, 2021.

F. Tax on commercial cannabis distributors or distribution facilities.

1. Every person who is engaged in business as a distributor or distribution facility of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July 1, 2018 through June 30, 2019 shall be set at two percent (2%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2019, such tax rate shall automatically increase each fiscal year by one percent (1%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts. However, such automatic increase shall not take place in Fiscal Year 2020-2021 on July 1, 2020. The annual one percent (1%) increase shall resume in Fiscal Year 2021-2022 on July 1, 2021.

G. Tax on commercial cannabis testing laboratories.

Every person who is engaged in business as a testing laboratory of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The tax rate effective July 1, 2018 shall be set at one percent (1%) of the gross receipts per fiscal year.

H. Tax on commercial cannabis dispensaries.

1. Every person who is engaged in business as a dispensary of commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July 1, 2018 through June 30, 2019 shall be set at four percent (4%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2019, such tax rate shall automatically increase each fiscal year by one-half percent (0.5%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts. However, such automatic increase shall not take place in Fiscal Year 2020-2021 on July 1, 2020. The annual one-half percent (0.5%) increase shall resume in Fiscal Year 2021-2022 on July 1, 2021.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof,

irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

Christopher M. Lopez, Chair,
Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM: KELLY L. DONLON Deputy County Counsel
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